

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PERIODICALS CLASSIFICATION CHANGE, 1999

Docket No. MC99-3

INITIAL BRIEF OF THE UNITED STATES POSTAL SERVICE
(May 24, 1999)

The United States Postal Service hereby provides its initial brief in this proceeding, in response to Presiding Officer's Ruling No. MC99-3/2.

STATEMENT OF THE CASE

On April 9, 1999, the United States Postal Service filed with the Postal Rate Commission (hereinafter "Commission") the Request of the United States Postal Service for a Recommended Decision on Periodicals Classification Change (hereinafter "Request"). This Request was filed in accordance with 39 U.S.C. § 3623 and the Commission's rules of practice and procedure.

The goal of this Request is to provide a remedy for a rate anomaly resulting from the last omnibus rate case (Docket No. R97-1), by which, for certain publications, the rates available in the Nonprofit and Classroom rate schedules (423.3 and 423.4) produce higher postage amounts than the rates available in the Regular rate schedule (421). The Request proposes a classification change that would allow Nonprofit and Classroom subclass mailings to use the Regular rate

schedule when such use would reduce the publication's postage. A new footnote to the Regular rate schedule is also proposed to allow Nonprofit and Classroom publications using the Regular rate schedule to continue to exempt publications with less than 10 percent advertising from the advertising pound rates.

The Request was accompanied by the direct testimony of Altaf Taufique, with one exhibit, as well as other material responsive to the Commission's Rules 54 and 64. In addition, the Postal Service moved for expedition and for waiver of certain provisions of Rule 64(h).

By Order No. 1237, issued on April 12, 1999, the Commission elected to sit *en banc*, and designated Ted P. Gerarden, director of the Commission's Office of the Consumer Advocate, to represent the general public in the proceeding. The Commission also stated its inclination to handle the Postal Service's request "in an expedient manner, absent a request for a hearing on a genuine issue of material fact." Order No. 1237 at 4. The Commission therefore asked parties to include in their notice of intervention whether a hearing was requested, stating with specificity the issues they believe would merit evidentiary hearings. By separate notice, Chairman Edward J. Gleiman designated Commissioner Ruth Y. Goldway to serve as Presiding Officer.

There are nine intervenors, but only one, the National Federation of Nonprofits, requested a hearing. The Commission held a prehearing conference on May 3, 1999, at which the Presiding Officer granted the Postal Service's motion for waiver. Tr. 1/10. In addition, NFN renewed its request for a hearing, and the Postal Service opposed this request. Tr. 1/11-16.

In Presiding Officer's Ruling No. MC99-3/1 (May 3, 1999), the Presiding Officer treated the Postal Service's opposition as a motion to forgo hearings. In response, NFN requested discovery and hearings in order to compare costs for the Regular, Nonprofit, and Classroom subclasses, and to determine whether refunds should be offered by the Postal Service back to January 10, 1999, when the rates at issue went into effect.¹ The Advertising Mail Marketing Association (AMMA) did not believe that hearings were necessary, but did raise the legal issue of whether the Commission is authorized to recommend that the Postal Service offer refunds back to January 10.² The Postal Service responded to AMMA's pleading, arguing in part that section 3625(f) provides no authority for the Commission to include as part of its formal recommended decision any limitation on the timing of implementation.³

In Order No. 1243, issued May 14, 1999, the Commission granted the Postal Service's motion to proceed without evidentiary hearings. The Commission also requested "briefs to allow participants to challenge the Service's contention that both

¹ Response of the National Federation of Nonprofits to Commission Ruling on Postal Service Motion for Expedition and to Forego Hearings (Presiding Officer's Ruling No. MC99-3/1), May 5, 1999. In its Request, the Postal Service noted the establishment, effective when the Request was filed, of a procedure by which Nonprofit and Classroom mailers can submit dual mailing statements and apply for a subsequent refund for the difference between the preferred postage paid and the otherwise applicable Regular rate, on mailings made from this date forward. The Postal Service mentioned this procedure in order to help provide notice of it, and to stress the unusual circumstances underlying it.

² Response of the Advertising Mail Marketing Association to Postal Service Motion to Forego Hearings (May 7, 1999).

³ Comments of the United States Postal Service on AMMA Pleading Regarding the Need for Hearings in this Docket (May 10, 1999).

the plain language of 39 U.S.C. § 3625(f) and the relevant case law indicate that the Commission has no authority to include as part of its recommended decision any limitation on the timing of rate implementation." *Id.* at 8-9.

The date for filing of briefs was set for May 24, 1999, with June 2, 1999 set for filing reply briefs. Presiding Officer's Ruling No. MC99-3/2 (May 14, 1999).

I. THE COMMISSION SHOULD RECOMMEND THE POSTAL SERVICE'S PROPOSAL TO ALLOW NONPROFIT AND CLASSROOM MAILERS TO USE REGULAR RATES, WITHOUT GIVING UP THEIR PREFERRED STATUS.

Even without the Postal Service's proposed change, the publications of Nonprofit and Classroom mailers could pay Regular rates, if these mailers were willing to sacrifice, at least temporarily, their preferred authorization. USPS-T-1 at 3-4. The proposed DMCS changes recognize that no preferred rate organizations should be treated differently than other similarly situated organizations, simply because the mailing profile of its publication makes it favorable to use the Regular, rather than preferred, rate schedule.

The Request of the Postal Service has not opened up for consideration any rates or fees that were established in Docket No. R97-1, nor does the Request indicate a belief that the Periodicals rates established in that proceeding are invalid.⁴ Instead, the Postal Service proposes to provide more convenient access to the established Regular rates for qualifying Nonprofit and Classroom publications.

⁴ Witness Taufique's testimony explains how rate design constraints, including the low cost coverages for the Periodicals subclasses, and the relatively high editorial content for Nonprofit and Classroom mailers (compared with that for Regular mailers), produce lower postage charges under the Regular schedule for certain publications. No law forbids such a result, although the Postal Service did not intend it, and seeks to avoid it in the future. USPS-T-1 at 1-3.

CONCLUSION

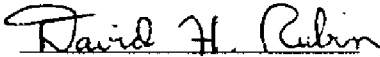
For the foregoing reasons, the Postal Rate Commission should make and submit a recommended decision to the Governors recommending the proposed revisions to the Domestic Mail Classification Schedule and its attendant rate schedules set forth in Attachments A and B to the Postal Service's Request.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

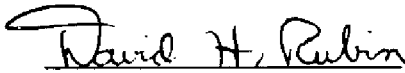
By its attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


David H. Rubin

475 L'Enfant Plaza West, S.W.
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May 24, 1999